NCR - CMQ LETTER NO. 1

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
Washington, D. C.

September 14, 1938.

TO MEMBERS OF AGRICULTURAL CONSERVATION COMMITTEES--
COTTON COUNTIES - NORTH CENTRAL REGION:

Dear Committeeman:

The following questions and answers relating to regulations and instructions pertaining to cotton marketing quotas for the 1938-1939 marketing year are submitted for your information:

1. QUESTION: What is the status of a landlord of a standing or fixed-rent tenant who receives cotton in payment of the stipulated rent?

ANSWER: The landlord of a standing or fixed-rent tenant is the transferee of cotton received by him in payment of the stipulated rent and must require the producer to identify the cotton to him as provided in section 408 of the regulations. If the cotton is identified to him by the use of a red marketing card (form Cotton 212), he must execute form Cotton 213 in all cases. If the cotton received in payment of the rent is marketed subject to penalty, the landlord and the standing or fixed-rent tenant may agree, as provided in section 505 of the regulations with respect to the marketing of cotton by barter or exchange, that the landlord will collect the penalty from the standing or fixed-rent tenant and remit it to the treasurer of the county committee. However, the landlord is not required to collect the penalty and the tenant paying the standing or fixed rental must remit the penalty to the treasurer of the county committee not later than thirty days after the payment of the rent if the penalty was not collected by the landlord.

2. QUESTION: How may a producer of cotton, such as the landlord of a standing or fixed-rent tenant or a ginner, identify cotton acquired by him as a buyer or transferee?

ANSWER: The regulations do not require the buyer or transferee to identify cotton to a subsequent buyer or transferee. The penalty with respect to the marketing of cotton is incurred by the producer of the cotton at the time it is marketed and must be collected by the first buyer. The penalty does not become a lien on the cotton marketed even though the penalty is not paid, and therefore the second and subsequent buyers of the cotton have no duty under the Act to collect the penalty or to require the seller to identify the cotton as being cotton the marketing of which was or was not subject to the penalty. However, a cotton producer who is also a buyer or transferee of cotton may be called upon to distinguish between cotton produced by him and cotton acquired by him in his capacity as a buyer or transferee. Where

the cotton was acquired from a producer to whom a red marketing card (form Cotton 212) was issued, the original form Cotton 213 may be used by the first buyer or transferee to identify the cotton to a subsequent buyer or transferee. Where the cotton was acquired from a producer to whom a white marketing card (form Cotton 211) was issued, the first buyer or transferee may identify the cotton by the records kept in connection with his business. In cases where a producer who is also the buyer or transferee of cotton grown by a producer to whom a white marketing card (form Cotton 211) was issued does not desire to rely solely upon his business records to identify such cotton to a subsequent buyer or transferee, the producer from whom he acquired the cotton may execute a form Cotton 211-A which could then be used by the first buyer or transferee to identify the cotton to the subsequent buyer or transferee. Although form Cotton 211-A was not designed for this purpose, the county committee may issue forms Cotton 211-A and suggest this procedure to producers wherever the use of form Cotton 211-A for such purpose will be helpful.

3. QUESTION: How may a person who was a cotton producer prior to 1938 and who is not engaged in the production of cotton in 1938 identify at the time of marketing cotton from a previous crop which he has on hand in 1938?

ANSWER: The penalty does not apply with respect to the marketing of cotton produced in any year prior to 1938 by a producer who is not engaged in producing cotton in 1938 and the regulations do not require that a marketing card be issued with respect to such cotton or that it be identified at the time it is marketed. However, for the convenience of buyers and persons who are not engaged in the production of cotton in 1938 and who have cotton on hand from a previous crop, the county committee may issue a white marketing card (form Cotton 211) to such person. The issuance of a white marketing card for this purpose is not prohibited by the regulations and is not in conflict with the purpose and intent of the regulations. Where a white marketing card (form Cotton 211) is issued for this purpose, the instructions contained in section 207(b) of Cotton 208-NCR should be followed with the exception that an additional notation should be made on the form Cotton 211 and in column F of form Cotton 250 to the effect that the person to whom the form Cotton 211 is issued is not producing cotton in 1938.

4. QUESTION: Should a cotton marketing card be issued to a producer who is located in 1938 on a farm for which a cotton acreage allotment was established but on which cotton is not produced in 1938?

ANSWER: With the exception of the cases covered by question 3 above, a cotton marketing card should not be issued by any person who is not engaged in 1938 in the production of cotton.

5. QUESTION: What type of evidence should the county committee require as proof of authority of an agent to receive form Cotton 211 or Form Cotton 212 on behalf of the producer to whom the marketing card is issued?

ANSWER: The regulations pertaining to cotton marketing quotas do not prescribe a power-of-attorney form to be executed as evidence of the authority of an agent to act for a producer in receiving the cotton marketing card issued to the producer. In passing upon the authority of an agent for the purpose mentioned above the rules contained in ACP-16, "Instructions on Signatures and Authorizations", should be followed. Before a marketing card is delivered to an agent acting for a producer the county committee should determine that the agent is specifically empowered to receive the producer's marketing card. In many instances the authority of the agent to act for the principal in connection with the conservation programs does not include the authority to receive the cotton marketing card. The cotton marketing cards should be delivered to the producers for whom they were issued wherever possible and the delivery of the marketing cards to agents should be limited to those cases where the necessity for the producer to act through an agent is thoroughly apparent from the circumstances of the particular case. If the producer desires an agent to act for him in the use of the marketing card after the marketing card has been delivered by the producer, the designation of the agent may be accomplished by the producer through the execution of Part II of the marketing card.

6. QUESTION: Is the ginner required to report on form Cotton 216 the name of the person who produced the cotton, the name of the operator of the farm on which the cotton was produced, the serial number of the farm, and the county in which the farm is located in the following cases: (a) Where remnants or odd lots of seed cotton are purchased from producers; (b) Where cotton is received by the ginner as a toll in lieu of a cash charge for ginning services; and (c) Where the cotton to be ginned is acquired from a buyer or transferee of seed cotton?

ANSWER: There are no exceptions to the requirement that the ginner show in columns A, B, C, D, and E, respectively, of form Cotton 216 the farm serial number, the name of the operator of the farm, the name of the producer who grew the cotton, and the name of the county in which the farm is located. In order that the ginner may report the required information, he may enter in column F of form Cotton 216 the number of pounds of seed cotton received and in column G enter the estimated or known lint turn-out of such seed cotton. The headings of columns F and G of form Cotton 216 should be altered accordingly. In some instances it would be well for the ginner to use separate sheets of form Cotton 216 to record such cotton. Ginners who acquire seed cotton from buyers or transferees must, in order that they will be in

a position to make the ginner's record and report required by section 601 of Cotton 207, require such buyers or transferees to furnish the necessary information with respect to such seed cotton. For the convenience of the ginner and the buyer or transferee of seed cotton form Cotton 220 may be used with the necessary alterations by the buyer or transferee to assemble the information to be shown by the ginner with respect to the seed cotton. The responsibility for making an accurate report of the cotton ginned rests with the ginner.

7. QUESTION: Is it necessary that a separate form Cotton 219 be issued to a buyer who remits at one time to the treasurer of the county committee the penalties reflected in several forms Cotton 213b?

ANSWER: In case the amount remitted by a buyer is composed of sums collected from a number of producers through the marketing of cotton in several transactions so that the buyer submits several forms Cotton 213b with the remittance, the treasurer of the county committee may issue one form Cotton 219 to such buyer as a receipt for the entire sum remitted by preparing the receipt in accordance with the existing procedure, except that a list shall be prepared in duplicate showing the name of the producer, the farm serial number, and the amount paid by each producer as evidenced by each form Cotton 213b. The treasurer should enter the words "See attached list" on the applicable lines of form Cotton 219 in lieu of the name of the operator or producer and the farm serial number. One copy of the list so prepared should be attached to each copy of form Cotton 219 and the copies thereof retained by the treasurer should be used by him in posting the required information to forms Cotton 254 and 256.

8. QUESTION: What is the meaning of the expression "collection and payment at par" when applied to checks, drafts, or money orders covering the remittance of penalties?

ANSWER: The expression means that the checks, drafts, or money orders must be paid by the person or institution on whom they are drawn dollar for dollar in the amount due and payable as the penalty for which they are tendered without any allowance or discount for the expense or risk of collection, or for the time necessary to transmit the funds from one place to another. The expression should not be construed to apply to charges by the depository bank for the service of the cotton special deposit trust account. Where the charge for carrying the account is assessed on the basis of the number of items handled for collection or checks drawn against the account, as for example, a specified charge per item or a specified fixed charge with an allowance for additional charges for collections or disbursements in excess of a maximum number of such items, checks deposited for collection subject to

such service charges should not be considered to have been paid below par. All service charges, collection fees, and deposit deductions charged by the depository bank for the account, shall be paid by the county association treasurer from the funds provided for the administrative expenses of the county committee in accordance with existing procedure.

9. QUESTION: Should the county committee accept a bond of indemnity or funds to be held in escrow to secure payment of the penalty after a portion of the penalty to be incurred with respect to the marketing of cotton has been paid by the producers on the farm with respect to which the bond or funds are tendered?

ANSWER: No. While the regulations do not prevent the acceptance of the bond or funds at that time, the county committee will not be in a position to make a fair estimate of the penalty to be incurred and the records with respect to the farm account would be made unnecessarily complicated. County committees should confer with the operator before or at the time of issuing the red marketing cards and, if possible, determine whether or not the penalty will be secured pursuant to section 507 of Cotton 207.

10. QUESTION: If a producer is engaged in 1938 in the production of cotton on more than one farm in the county and the acreage planted to cotton on one or more but not on all such farms exceeds the cotton acreage allotment, do the regulations require that a red marketing card (Form Cotton 212) be issued to the producer for all such farms?

ANSWER: No, it is not necessary to issue a red marketing card to the multiple producer with respect to the farm on which the planted cotton acreage is within the cotton acreage allotment, if any other producer on the farm will receive a white marketing card (Form Cotton 211). In this case, the cotton marketed from the farm planting within its allotment may be marketed by the producer to whom the white marketing card is issued. If no producer on the farm planting within the farm acreage allotment is eligible to receive a white marketing card due to his multiple holdings, it will be necessary to issue to such producer or producers a red marketing card. On the other hand, the regulations provide that a red marketing card may be issued to a producer with respect to the farms in which he has an interest on which the acreage planted to cotton does not exceed the farm cotton acreage allotment, even though a white marketing card was issued to other producers on the farm who do not have an interest in the farm on which the acreage planted to cotton exceeds the acreage allotment.

11. QUESTION: If a person is operating a cotton farm as owner or operator and at the same time is the operator of a gin, does the transfer of his cotton from the farm account to the gin account constitute a sale, barter, or exchange of the cotton?

ANSWER: No. A sale, barter, or exchange cannot occur unless title thereto is transferred from one person, called a seller or transferrer, to another person, called the buyer or transferree. In

cases where a producer of cotton is also the operator of a gin, the cotton produced by or for him is not considered to have been marketed within the meaning of the regulations when through a bookkeeping transaction the cotton is transferred from the account for his farm to the account for his gin.

12. QUESTION: Can a cotton producer sell cotton to an unincorporated gin company of which he is owner or part owner?

ANSWER: In view of the answer to the preceding question, it is evident that if the producer is also the full owner of the unincorporated gin company the cotton produced by him would not be considered to have been marketed when transferred to the unincorporated gin company, since title would not have been transferred.

However, in the event the producer is a member of a partnership, which would apparently be the only type of organization where we would have part owners and not have an incorporated company, it would be possible for the partnership to purchase the cotton produced by an individual member of the partnership. The same would be true in the case of a member of an unincorporated association or an incorporated association selling his cotton to the association.

Sincerely yours,

Claude R. Wickard

Claude R. Wickard,
Director, North Central Division.